

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JAMES A. WILSON, ET, AL

CIV. NO.: 05-399-JJF

V. COMM. STANLEY TAYLOR,

RICK KEARNEY WARDEN,

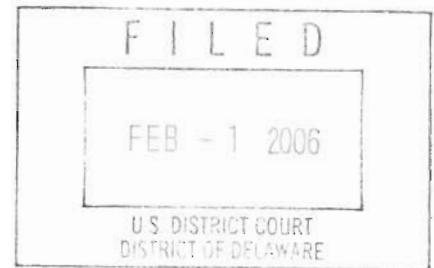
LT. HOLLIS, SGT. MEARS,

STAFF LT. HENNESSY,

MIKE DELOY, CPL.J.

STOZENBACH.

DEFENDANTS.



MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A TRO AND PRELIMINARY INJUNCTION

Statement of the case

This is a civil rights action brought under 42 U.S.C. § 1983 by state prisoners whos due process of law has been violated and equal protection is being denied, through jobs, classification and disciplinary hearings. The plaintiff seeks a temporary restraining order and a preliminary injunction to ensure that he does not suffer from irreparable injury and that his civil rights are not violated and that retaliatory actions are not executed out on him for filing a civil complaint which is an exercise of his rights.

Statement of Facts

As stated in the declaration submitted with this motion, the plaintiff, et, al, suffers from a denial of due process and equal protection of law. The classifying of black inmates out of the building before appeal process is completed and making them do sanction while appeal process is in motion is clearly a denial of due process. The defendants whom relief is sought along with the counselor of the building, are respectively, the overseers of classification one way or the other.

The plaintiff is entitled to a preliminary injunction and a temporary restraining order. In determining whether a party is entitled to a temporary restraining order or preliminary injunction, courts generally consider several factors: Whether the party will suffer irreparable injury, the "balance of hardship" between the parties, the likelihood of success on the merits, and the public interest. Each of these factors favors the grant of this motion.

A. The plaintiff threatened with irreparable harm.

Plaintiff alleges that he has been denied his civil liberty if he is classified to a higher security and a deprivation of his Statutory rights of parole procedure Title 11 §4347. If plaintiff is classified to higher security he would remain at such status until he leaves and lose the 2.5 days of month goodtime that he now earns as a tutor . As a matter of law, the continuing deprivation of constitutional rights constitutes irreparable harm. Elrod v. Burns, 427 U.S. 347,373, 96 S.Ct 2673 (1976). This principle has been applied in prison litigation generally, see Newsom v. Norris, 888 F2d 371, 378 (6th Cir. 1989); In addition, the plaintiff would suffer irreparable harm if he classified to a higher security when he does not fit the criteria.

B. The balance of hardships favors the plaintiffs

In deciding whether to grant TRO and preliminary injunctions, courts ask whether the suffering of the moving party if the motion is denied will outweigh the suffering of the non-moving party if the motion is granted. See. e.g. Mitchell v. Cuomo, 748 F.2d 804,808 (2d Cir 1984). In this case, the future classification of the plaintiff through unjust measures and retaliatory actions because plaintiff does not fit the criteria of the classification and is in jeopardy of losing his liberties, the plaintiff would suffer more likely then the defendants.

C. The plaintiffs is likely to succeed on the merits.

The plaintiffs has a great likelihood of success on the merits. Defendants has clearly violated plaintiffs due process and their equal protection rights

D. The relief sought will serve the public interest

In this case, the grant of relief will serve the public interest because it is always in the public interest for prison officials to obey the law.

Duran v. Anaya, 642 F. supp. 510 527(D.N.M.) 1986 (respect for law, particularly by officials responsible for the administration of the states correctional system, is in itself a matter of the highest public interest. See; also, Llwelyn V. Oakland County Prosecutor's Office, 402 F.Supp. 1379. 1393 (E.D.Mich. 1975) (The Constitution is the ultimate expression of the public interest)

Point II

The Plaintiffs should not be required to post security.

Usually a litigant who obtains interim injunctive relief is asked to post security. Rule 65(c), Fed.R.Civ.P. however, the plaintiffs are indigent and is unable to post security, the court has the discretion to excuse an impoverished litigants form posting security. Ornates-Hernandez v. Smith 541 F.Supp. 351, 358 n. 30(c.D.Cal1982) The court should grant the relief requested without requiring the post of security.

Conclusion

For the foregoing reasons, the court should grant the motion in its entirety

1/27/06

James A. Wilson
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Georgetown, D.C. 20994-0502

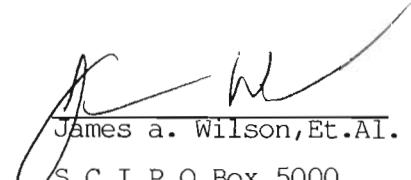
I JAMES A. WILSON, declares under penalty of perjury that I mailed a copy of the enclosed MOTION FOR AN APPOINTMENT OF COUNSEL AND MOTION FOR PRELIMINARY INJUNCTION AND TRO TO THE FOLLOWING ENTITIES. 8 copies of Motion for Injunction and 1 copy of Motion for Counselor

CARL DANBERG

CARVEL STATE BLDG

820 N. FRENCH ST. WILM, DE.19801

DATED: 1/28/06


James a. Wilson, Et.Al.
S.C.I.P.O.Box 5000
Georgetown, DE.19947

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JAMES A. WILSON, ET,AL,

:

Plaintiffs,

:

CIL. ACT. NO.: 05-399-JJF

v.

:

STANELY TAYLOR,ET, AL.

:

Defendants.

:

ORDER TO SHOW CAUSE AND PREMINARY INJUNCTION AND TRO

Upon the supporting affidavit of the plaintiff and the accompanying of memorandum of law, it is ORDERED that the defendants show cause in room _____ of the UNITED STATES COURTHOUSE, 844 N.King St, Lockbox 18 Wilmington, Delaware 19801, on the ____ day of _____ 2006, at _____ o'clock, why a preliminary injunction should not issue pursuant to Rule 65(a), Fed. R. Civ.p., enjoining the said defendants, their successors in office agents and employees and all other persons acting in concern and participation with them, to cease them from classifying plaintiff to a Higher Security that he does not fit and that no acts of retaliation is carried out on him for the Civil Complaint that he has filed against certain individuals.

IT IS FURTHER ORDERED that this order to show cause, and all other papers attached to this application, shall be served on defendants by _____ 2006, by U.S. Marshals Service.

Dated: _____

United States District Judge

1396 U.S. POST
\$01.1
7900
5383
FROM ZIP

JM: JAMES A. WILSON, JR., MERIT/EAST
SUSSEX CORRECTIONAL INSTITUTION
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GEORGETOWN, DELAWARE 19947

UNITED STATES DISTRICT COURT

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WILM, DE. 19801-3570